

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:)	Docket SRPD: RPDD06/07SCC-4373
)	
Microsemi Corporation)	
2830 Fairview Street)	CORRECTIVE ACTION
Santa Ana, California 92704)	CONSENT AGREEMENT
CAD051550838)	
)	
Respondent.)	
)	Health and Safety Code
)	Sections 25187 and 25200.14
_____)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Microsemi Corporation (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code sections 25187 and 25200.14, which authorize DTSC to issue an order to require corrective action when DTSC determines that there has been, is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent is the former operator and current owner of a hazardous waste facility located at 2830 Fairview Street, Santa Ana (Facility).

1.4. Respondent engaged in the management of hazardous waste pursuant to a Conditional Authorization issued by DTSC on August 3, 1993.

1.5. The terms used in this Consent Agreement are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.6. Respondent agrees to implement all DTSC-approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.

1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to Health and Safety Code section 25187.

FINDINGS OF FACT

2.1. On December 18, 2006, DTSC received a Phase II Site Investigation Report (Phase II) dated August 2006 from Microsemi Corporation. The Report prepared by Environmental Resources Management indicates PCE, cis 1,2 DCE, TCE and vinyl chloride at the levels of 680 ug/L, 510 ug/L, 220 ug/L and 17 ug/L respectively in the groundwater at the Facility. The Maximum contaminants level for these chemicals are at 5 ug/L, 6ug/L, 5ug/l and 0.5 ug/L respectively. Soil vapor sample results also indicate PCE and TCE at elevated levels of 100 ug/L and 31 ug/L, respectively, in the soil beneath the Facility. The California Human Health Screening levels for these chemicals are at 0.18ug/L and 0.53ug/L respectively.

2.2. On January 11, 2006, DTSC conducted a site inspection of the Facility. Based on the site inspection and the information available to DTSC, DTSC concludes that further investigation is needed to determine the nature and extent of any release of hazardous waste or hazardous waste constituents at the Facility.

2.3. On April 9, 2007, DTSC met with the Respondent and its Environmental Consultant to discuss the scope of work at the Facility. At the time of the meeting, the Respondent provided DTSC with a Phase I Environmental Site Assessment (Phase I), dated October 2005, a Pre-Feasibility Study Data Collection Workplan, dated October 2006, and a Groundwater Monitoring Report, dated October 2006 and January 2007, including Quarterly Monitoring Events (October 2006 and January 2007 Monitoring Report).

2.4. The hazardous waste and hazardous waste constituents of concern at the facility are volatile and semi-volatile organic compounds, metals and cyanides.

2.5. Hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: subsurface soil, groundwater and vapor.

2.6. The Facility is located near a residential area to the east and the Greenville Banning flood control channel to the west. Irvine Ranch Water District well number 13 is adjacent to the west end of the Facility.

PROJECT COORDINATOR

3. Within 14 days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice.

WORK TO BE PERFORMED

4. Respondent agrees to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing

regulations, and the applicable DTSC and the United States Environmental Protection Agency guidance documents.

4.1. Respondent agrees to develop a Current Conditions Report (CCR) and a Facility Investigation (FI) Workplan (FI Workplan). Further details regarding the content of these documents are provided in Section 6, Facility Investigation (FI) of this Consent Agreement.

4.2. Respondent agrees that Interim Measures involving source removal should be conducted at the Facility. DTSC may determine that additional Corrective Measures are required based on the results of further investigation. Further details regarding the Interim and Corrective Measures are provided in Section 5, Interim Measures, and Section 8, Corrective Measures Study, of this Consent Agreement.

4.3. Respondent agrees to develop a "Master Schedule" for the project for DTSC review and approval. The Master Schedule will take into account the planned Facility remodeling and list key milestones. The Master Schedule may be updated, revised, or amended as needed, subject to DTSC review and approval. The Master Schedule will be provided as part of the Current Conditions Report.

INTERIM MEASURES (IM)

5.1. Respondent shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. Within 30 days of the effective date of this Consent Agreement, Respondent shall submit a Current Conditions Report to DTSC. The Current Conditions Report is subject to approval by DTSC and shall consist of the following: the Facility Decommissioning Closure Report, dated February 2007, (Closure Report), the Phase I, Phase II, and October 2006 and January 2007 Monitoring Report as well as a summary of the data contained in the Closure Report, Phase I, Phase II, and October 2006 and January 2007 Monitoring Report.

5.3. Within 30 days of the effective date of the Consent Agreement, Respondent shall submit a Source Removal IM Workplan. The Source Removal IM Workplan shall be prepared in a manner consistent with the scope of work as presented in Attachment 1. DTSC agrees to make every reasonable effort to provide comments to the Source Removal IM Workplan within 60 days of submittal.

5.4. Respondent agrees to prepare a Fact Sheet and a Public Notice summarizing the planned IM pursuant to California Code of Regulations, title 22, section 66271.9, subsection (c)(1)(d). DTSC will review the IM Fact Sheet and Public Notice and notify the Respondent in writing of DTSC's approval or disapproval, including any comments and/or notifications. When DTSC approves the IM Fact Sheet and Public Notice, Respondent shall place the Public Notice in the local newspaper and mail the approved IM Fact Sheet to all individuals on the established Facility mailing list.

5.5. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Coordinator orally within

48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 60 days of receiving DTSC's written request, Respondent shall submit to DTSC an IM Workplan for approval. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan.

5.6. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 60 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan.

5.7. All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.8. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2.

FACILITY INVESTIGATION (FI)

6.1. Concurrent with the submission of an IM Workplan and a Current Conditions Report, Respondent shall submit to DTSC a Facility Investigation Workplan (FI Workplan). The FI Workplan is subject to DTSC approval and shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 4. DTSC agrees to make every reasonable effort to provide comments on the FI Workplan within 30 days of the submittal. The FI Workplan will include a Health and Safety Plan prepared in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2.

6.2. To the extent not already addressed in the Current Conditions Report, including attachments as well as other data reports previously submitted to DTSC, the FI Workplan shall detail the methodology to: (1) gather data needed to make decisions on any IMs that may be necessary (beyond that identified in Section 5.3) during the early phases of the Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC and Respondent. The FI Workplan will allow for a dynamic data acquisition program to be implemented, which defines the investigation goals, and workplans defining each step in the process. A specific schedule for implementation of all activities shall be included in the FI Workplan.

6.3. Respondent shall submit a FI Report to DTSC for DTSC review and approval after all investigation phases are complete and in accordance with DTSC-approved FI Workplan schedule. The FI Report shall be comprehensive and contain all

technical memoranda developed during implementation of the FI Workplan. The FI Report shall also contain a Risk Assessment to evaluate the actual and/or potential human health risk and establish site-specific action levels and cleanup standards to address those constituents released at and/or from the Facility. DTSC will review the FI Report including the site-specific Risk Assessment and notify Respondent in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a FI Workplan, Respondent shall submit to DTSC an updated Health and Safety Plan in accordance with Attachment 2.

6.5. DTSC may require Respondent to prepare a FI Summary Fact Sheet. If required, Respondent shall submit a FI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the FI. The FI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved FI Workplan. DTSC will review the FI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the FI Summary Fact Sheet, Respondent shall mail the approved FI Summary Fact Sheet to all individuals on a mailing list established pursuant to California Code Regulations, title 22, section 66271.9(c)(1)(D), within 15 calendar days of receipt of written approval.

CORRECTIVE MEASURES STUDY (CMS)

7.1. Respondent shall prepare a Corrective Measures Study for contaminant concentrations that remain in soil and groundwater at the Facility after completion of IM and that exceed human health-based or ecologically-based action levels established by the DTSC-approved Risk Assessment.

7.2. Within 45 days of DTSC's approval of the FI Report and the Risk Assessment, Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5.

7.3. The CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the Facility. The CMS Workplan shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

7.4. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

7.5. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

REMEDY SELECTION

8.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

8.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.

8.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

CORRECTIVE MEASURES IMPLEMENTATION (CMI)

9.1. Within 60 days of Respondent's receipt of notification of DTSC's selection of the corrective measures, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

9.2. Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC an updated Health and Safety Plan in accordance with Attachment 2.

9.3. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC the documents listed below, to the extent applicable. These documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

- o Operation and Maintenance Plan
- o Construction Workplan
- o Construction Completion Report
- o Corrective Measures Completion Report

9.4. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

9.5. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, financial test, or corporate guarantee as described in California Code of Regulations, title 22, section 66265.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondent is unable or unwilling to undertake the required actions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

10. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

11.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

11.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

11.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

11.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

12.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the first day of the first month following the close of each reporting period. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

12.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

12.3. The certification required by paragraph 12.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures

designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____

Date: _____

12.4. Respondent shall provide three hard copies and one electronic copy on compact disc in searchable portable document format (PDF) of all documents, including but not limited to, workplans, reports, and correspondence. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one hard copy and one electronic copy is required.

12.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

13. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

ADDITIONAL WORK

14. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and

disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

15.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

15.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

16.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

16.2. Respondent shall notify DTSC in writing at least seven days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

16.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

17. Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any off-site property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants. Respondent will maintain the project file at its consultant's office (ERM office in Santa Ana, California) until the end of the project at which point the project file will return to Respondent at an alternate location. Additionally, Respondent will make good-faith, reasonable efforts to provide DTSC with access to off-site properties.

RECORD PRESERVATION

18.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Stephen W. Lavinger, Branch Chief
Tiered Permitting Corrective Action Branch
Permitting and Corrective Action Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

18.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

18.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility, or at a location otherwise agreed to by the parties, to afford easy access by DTSC and its representatives.

DISPUTE RESOLUTION

19.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

19.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

19.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Stephen Lavinger, Chief Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

19.4. DTSC and Respondent shall have 14 days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This

period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

19.5. After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

19.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work, or any other deadlines, required under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

20.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

20.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

20.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

20.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

20.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's

approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

20.6. Respondent does not admit responsibility for any release of any hazardous wastes or hazardous waste constituents from the Facility. Further, this Consent Agreement shall not constitute a release, waiver, covenant not to sue, or limitation on any rights, remedies, powers, or authorities that Respondent has under any statutory, regulatory, or common law authority.

OTHER CLAIMS

21. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

22. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

OTHER APPLICABLE LAWS

23. All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

24.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

24.2. An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$ 38,212. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit A and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

24.3. Respondent shall make an advance payment to DTSC in the amount of \$ 19,106 within 30 days of the effective date of this Consent Agreement. If

the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 27 of this Consent Agreement.

24.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

24.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

24.6. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

24.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

25.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Consent Agreement.

25.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by Stephen Lavinger, Branch Chief, Tiered Permitting Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

26. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

EFFECTIVE DATE

27. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

28. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: May 23, 2007

BY: Original signed by John Hohener
Representing Respondent

John Hohener, Vice President of Finance
Name and title of Respondent

DATE: May 30, 2007

BY: Original signed by Stephen W. Lavinger
Stephen W. Lavinger, Branch Chief
Tiered Permitting Corrective Action Branch
Permitting and Corrective Action Division
Department of Toxic Substances Control

This Corrective Action Consent Agreement posted on DTSC's website does not include all attachments from the original document. If you need copies of a specific document, please contact the DTSC project manager listed in the document.